

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

**ARTURO MAGANA AND
ROSA L. MAGANA**

VS.

**ALLSTATE VEHICLE AND
PROPERTY INSURANCE COMPANY**

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§

CIVIL ACTION NO. _____

JURY DEMANDED

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, and pursuant to Rule 15, Federal Rules of Civil Procedure, and 28 U.S.C. Sections 1441 and 1332, files this its Notice of Removal and in connection therewith would respectfully show the Court the following:

**I.
BACKGROUND**

Petitioner is a Defendant in a civil action now pending in the 139th District Court of Hidalgo County, Texas, Cause Number C-2120-16-C, styled *Arturo Magana and Rosa L. Magana v. Allstate Vehicle and Property Insurance Company*, wherein Plaintiffs seek monetary relief for property damage, and alleged violations of the Texas Insurance Code, including violations of the Prompt Payment of Claims Act and Unfair Insurance Practices, as well as claims for breach of the duty of good faith and fair dealing.

**II.
BASIS FOR REMOVAL**

The district courts of the United States have original jurisdiction over this action based on diversity of citizenship among the parties, in that the Defendant is diverse in citizenship from the

Plaintiffs.

**III.
DIVERSITY IN CITIZENSHIP**

The Plaintiffs, Arturo Magana and Rosa L. Magana, are domiciled in Hidalgo County, in the State of Texas, and were domiciled there at the time this action was commenced. Plaintiffs were at that time and are now citizens of the State of Texas.

Allstate Vehicle and Property Insurance Company is a corporation incorporated under the laws of the State of Illinois, having its principal place of business now and at the time this action was commenced at Northbrook, Cook County, in the State of Illinois. Defendant is now, and was at the time this action was commenced, a citizen of the State of Illinois and of no other state.

Accordingly, diversity of citizenship exists among the parties.

**IV.
AMOUNT IN CONTROVERSY**

The amount in controversy in this action exceeds, exclusive of interests and costs, the sum of Seventy-Five Thousand Dollars (\$75,000.00). Plaintiffs' Original Petition states Plaintiffs seek monetary damages of \$75,000.00 or less. See Plaintiff's Original Petition Paragraph IV. However, Plaintiff did not file a binding stipulation of damages. Should Plaintiff prevail on the claims against Defendant stated in the Plaintiff's Original Petition, attached to this Notice, Plaintiff would be entitled to damages in excess of Seventy-Five Thousand Dollars (\$75,000.00). The applicable policy provides dwelling limits of \$103,901.00, other structure limits of \$10,391.00 and contents coverage of \$62,341.00. See declarations page attached as Exhibit A. Prior to suit, Plaintiff submitted a demand for \$43,631.16. A copy is attached as Exhibit B. In the demand, Plaintiff notes the potential for seeking recovery of treble damages. Considering Plaintiffs' pleadings and the damages Plaintiffs would be entitled to, should they prevail, the amount in controversy exceeds Seventy-Five Thousand

Dollars (\$75,000.00).

V.

Removal of this action is proper under 28 U.S.C. §1441, since it is a civil action brought in a state court, and the federal district courts have original jurisdiction over the subject matter under 28 U.S.C. §1332 because the Plaintiff and Defendant are diverse in citizenship and the amount in controversy exceeds \$75,000.00.

VI.

This notice of removal is being filed within thirty (30) days after receipt by Petitioner of Plaintiffs' Original Petition, which was the first notice to Defendant of this lawsuit. This removal is filed under 28 U.S.C. Section 1446(b).

VII.

Petitioner's time to answer or remove with respect to the Plaintiffs' Original Petition has not expired. Plaintiff's Original Petition was served on the Defendant Allstate Vehicle and Property Insurance Company on June 22, 2016.

VIII.

This action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. Section 1331 and this action may be removed to this Court by Petitioner, pursuant to the provisions of 28 U.S.C. Section 1441. Copies of all pleadings including the docket sheet on file with the State Court are attached hereto.

WHEREFORE, ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, Defendant in this action, pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. §1446, removes this action for trial from the 139TH District Court, Hidalgo County, Texas to this Court, on this 21st day of July, 2016.

Respectfully submitted,

BY: /s/ Rosemary Conrad-Sandoval

Rosemary Conrad-Sandoval

Attorney-in-charge

State Bar #04709300

Federal ID #13738

R. Jordan Riley

State Bar #24064424

Federal ID #2515695

Of Counsel

ROERIG, OLIVEIRA & FISHER, L.L.P.

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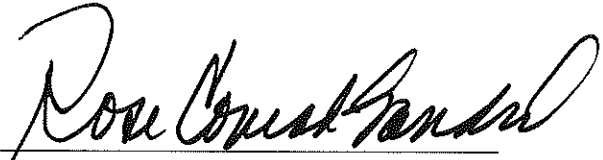
(956) 386-1625 (Fax)

ATTORNEYS FOR DEFENDANT

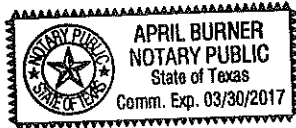
VERIFICATION

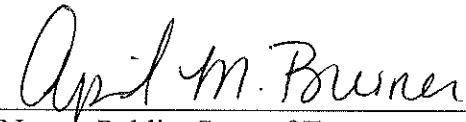
THE STATE OF TEXAS :
:
COUNTY OF HIDALGO :

I, ROSEMARY CONRAD-SANDOVAL, being first duly sworn, depose and say that: I am counsel for Petitioner, ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY; I am familiar with the contents of the above; and to the best of my knowledge the contents thereof are true and correct.


ROSEMARY CONRAD-SANDOVAL

SUBSCRIBED AND SWORN TO BEFORE ME by the said ROSEMARY CONRAD-SANDOVAL, this 21st day of July, 2016 to certify which witness my hand and seal of office.




Notary Public, State of Texas

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Notice of Removal has been mailed, Certified Mail, Return Receipt Requested, to the Attorney for Plaintiff, as follows:

R. Kent Livesay
LAW OFFICES OF R. KENT LIVESAY, P.C.
2510 S. Veterans Blvd.
Edinburg, Texas 78539

on this 21st day of July, 2016.

/s/ Rosemary Conrad-Sandoval
ROSEMARY CONRAD-SANDOVAL